Role of Foreign Direct Investment (FDI) in Resolving IBC Cases

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The Insolvency and Bankruptcy Code (IBC) 2016, transformed India's insolvency landscape, but its effectiveness depends largely on the availability of capital for resolving distressed businesses. This article examines the crucial role of Foreign Direct Investment (FDI) in enhancing IBC outcomes through capital infusion, strategic expertise, and competitive bidding. It analyses the legal frameworks governing FDI in insolvency cases, including FEMA, RBI, SEBI, and sector-specific rules, and explores feasibility of key investment routes for FDI such as ARCs, AIFs, SSFs, and ECBs. Through examples of successfully resolved CIRP cases and sectoral impact of FDI on IBC processes, the author advocates for relaxation of FDI norms except in crucial sectors. Besides, he draws some key takeaways from foreign jurisdictions to attract and sustain FDI in resolving companies under the IBC, which, according to the author, is vital for boosting resolutions and positioning India as a global hub for investments in distressed assets.
Read on to know more…

1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC), marked a significant transformation in India's corporate insolvency resolution framework by providing a time-bound and structured process for distressed businesses. It is aimed to promote creditor confidence, enhance recovery rates, and ensure economic stability. However, one of the key challenges in the resolution of insolvent companies is the unavailability of sufficient funding to revive these businesses. This is where Foreign Direct Investment (FDI) can play a crucial role.

The introduction of IBC has not only streamlined insolvency proceedings but also opened doors for foreign investors looking for distressed asset investment opportunities in India. The participation of global investors, Asset Reconstruction Companies (ARCs), and private equity funds in insolvency resolutions has led to better recovery rates, improved market confidence, and faster turnaround of distressed businesses.

1.1. Statutory Background

India's insolvency reform is constitutionally anchored under Entry 9 of List III (Concurrent List) and Article 246 of the Indian Constitution, which empower both Parliament and states' legislatures to legislate on bankruptcy matters. This shared competence forms the foundation for the IBC and enables the integration of cross-border mechanisms including FDI participation. The significance of FDI in insolvency resolution are as under:

a. **Infusion of Fresh Capital**: Many distressed companies require substantial capital for restructuring and operational revival, which foreign investors can provide.
b. **Better Valuation & Competitive Bidding**: Increased foreign participation enhances competition in the Corporate Insolvency Resolution Process (CIRP), leading to better valuation and recovery for creditors.
c. **Expertise and Global Best Practices**: Foreign investors often bring in strategic expertise, technology, and best management practices, improving business sustainability.
d. **Strengthening India's Position as an Investment Hub:** The success of IBC cases involving foreign investment has positioned. India as an attractive market for distressed asset resolution.

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Despite its potential, the FDI faces several challenges in resolving IBC cases including regulatory bottlenecks, valuation concerns, and procedural complexities. Recent reforms in FDI policies and insolvency laws have made the process more streamlined, but there is still significant scope for improvement.

In this article, the author explores legal framework governing FDI in the IBC cases, the impact of foreign investments on insolvency resolution, and its challenges. Besides, India's approach has been compared with global best practices and policy recommendations have been provided for enhancing the participation of foreign investment under the IBC framework.

2. Comparative Analysis: Domestic vs.Foreign Capital in the IBC Resolutions

The success of the IBC regime in India depends significantly on the availability of capital to revive distressed businesses and maximize recovery for creditors. While domestic investors, banks, and financial institutions play a crucial role, they often face limitations in funding large-scale corporate resolutions. This creates an urgent need for FDI in stressed asset.

A comparison between domestic and foreign capital in insolvency resolutions in Table -1 highlights on why FDI is becoming increasingly important.

From this analysis, it is evident that foreign investors play a transformative role in the resolution of stressed assets by bringing in capital depth, strategic insights, and competitive bidding.

Table 1: Comparison between domestic and foreign capital in insolvency resolutions

Factor	Domestic Investors	Foreign Investors
Capital Availability	Limited due to NPA burden on banks and restricted financial resources.	Abundant capital from global funds, PE investors, and multinational corporations.
Risk Appetite	• Conservative • Preference for secured lending over distressed asset investments.	• Higher risk tolerance • Willing to invest in deep restructuring.
Investment Horizon	Short-term focus, often limited to financial restructuring.	Long-term commitment with strategic business transformation.
Expertise	Limited exposure to turnaround strategies, especially in high-tech industries.	Advanced technology, global best practices, and specialized turnaround skills.
Regulatory Constraints	Subject to RBI lending norms and banking sector exposure limits.	FDI regulations provide greater flexibility for direct investments and joint ventures.

2.1. How FDI Can Address Existing Gaps in IBC Resolutions?

Several IBC cases have witnessed low recovery rates or failed resolutions due to inadequate investor participation. FDI can bridge these gaps by:

(a) Providing an alternative capital source when Indian lenders and ARCs fail to generate enough bids.

(b) Offering long-term investment approaches, ensuring businesses don't collapse post-resolution.

(c) Encouraging global best practices in distressed assets management, ensuring better outcomes for both creditors and employees.

(d) Expanding the buyer pool for distressed assets, leading to more competitive resolutions.

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The role of FDI in resolving IBC cases is not just about capital infusion—it brings better valuation, expertise, global best practices, and strengthens India's financial ecosystem. Given the limitations of domestic investors, foreign capital has become a necessary driver for successful resolution.

3. Legal Framework Governing FDI in IBC Cases

Foreign investment in distressed assets and insolvency resolutions is regulated under multiple laws and policies in India. While the government has eased FDI norms to attract global investors, certain sectoral restrictions, compliance requirements, and regulatory approvals still apply.

3.1. Key Regulations Governing FDI in IBC Cases

Foreign investments in distressed companies undergoing resolution under the IBC must comply with:

a. Foreign Exchange Management Act (FEMA), 1999 [Foreign Exchange Management (Non-Debt instrument) Rules 2019]

b. Consolidated FDI Policy & Press Notes [issued by DPIIT]

c. Reserve Bank of India (RBI) Guidelines [Investment in NPA's / ARCs]

d. SEBI Regulations on Stressed Asset Investments & AIFs.

e. Insolvency and Bankruptcy Code (IBC), 2016.

f. Competition Commission of India (CCI) Approval.

4. FDI Routes for Investing in the IBC Cases.

Foreign investors looking to participate in India's distressed asset market under the IBC, have multiple entry routes. Depending on their risk appetite, investment strategy, and

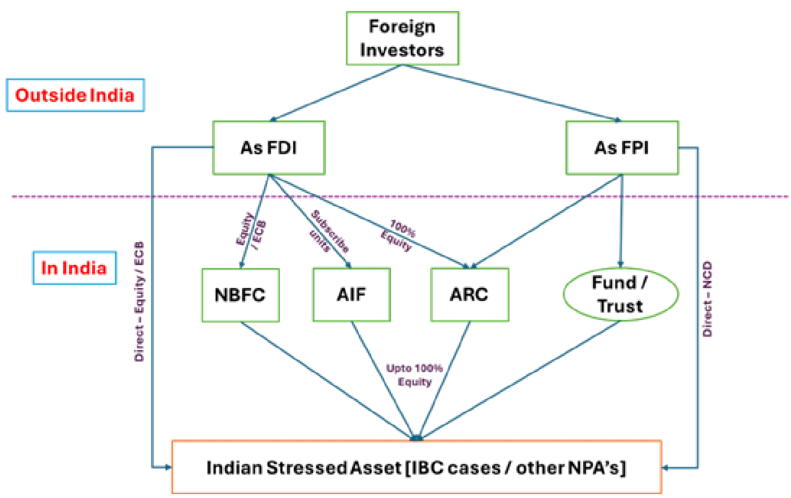
Table -2: FDI routes for investment in the IBC processes

Direct Acquisition of Corporate Debtors through Resolution plan process	(a) Foreign investors can bid for stressed companies by submitting a Resolution Plan under CIRP. (b) Approval from the Committee of Creditors (CoC) and the National Company Law Tribunal (NCLT) is required. (c) Strategic investors (such as global corporations and MNCs) prefer this route to expand their operations in India. **(d) Example**: ArcelorMittal's ₹42,000 crore acquisition of Essar Steel, a successful foreign **acquisition**[1&2] under the IBC.

1. ArcelorMittal and Nippon Steel complete acquisition of Essar Steel, Press Release (https://corporate.arcelormittal.com/media/press-releases/arcelormittal-and-nippon-steel-complete-acquisition)

2. ArcelorMittal and Nippon Steel Complete Joint Acquisition of Essar Steel in India, Press Release (https://www.nipponsteel.com/common/secure/en/news/20191216_400.pdf)

Investment through Asset Reconstruction Companies (ARCs)	(a) 100% FDI is **permitted**[3] in ARCs via the automatic route [*subject to RBI's 'fit-and-proper' criteria*], making it an attractive option for foreign funds. (b) ARCs specialize in acquiring non-performing assets (NPAs) from banks and restructuring them for sale. (c) Foreign investors can either set up their own ARCs or invest in existing Indian ARCs. **(d) Example**: Blackstone-backed International Asset Reconstruction Company (IARC) is one of the active players in India's distressed assets market.
Participation in Alternative Investment Funds (AIFs) and Special Situation Funds (SSFs)	(a) SEBI regulates Category II AIFs, which include stressed asset funds that pool foreign capital. (b) Special Situation Funds (SSFs), a new category under AIF regulations, are designed specifically for distressed asset investments. (c) Foreign investors prefer this route due to lower compliance burdens and flexible exit options.
Strategic Partnerships with Domestic Investors	(a) Foreign players partner with Indian financial institutions, NBFCs, or ARCs to co-invest in IBC cases. (b) This helps foreign investors navigate regulatory complexities while leveraging local expertise.
Special Purpose Vehicles (SPVs) for Distressed Asset Investments	(a) Foreign investors can create SPVs or Joint Ventures (JVs) for acquiring distressed companies under the IBC. (b) This structure allows for risk sharing and tax optimization. (c) Large sovereign funds and global PE investors use SPVs for structured investments in stressed assets.



3.Ministry of Commerce and Industry. Press Note No. 4 (2016 Series) (https://dpiit.gov.in/sites/default/files/pn4_2016.pdf)

> **The availability of multiple routes for foreign investors ensures that FDI plays a diverse and critical role in IBC resolutions.**

regulatory considerations, they can choose from direct acquisitions, partnerships, structured investments, and special investment vehicles that is explained in Table -2.

The availability of multiple routes for foreign investors ensures that FDI plays a diverse and critical role in IBC resolutions.Each investment path has its own advantages, depending on the investor's risk profile and market entry strategy.

5. Role of External Commercial Borrowings (ECBs) in FDI-Led IBC Resolutions

In addition to the capital flow in equity instruments, debt structures in the form of External Commercial Borrowings (ECBs) have emerged as a critical financing tool for foreign investors looking to participate in India's stressed asset market. ECBs allow eligible Indian companies to borrow from foreign lenders, including international banks, financial institutions, and private equity investors, providing much-needed liquidity for insolvency resolutions under the IBC. The Reserve Bank of India (RBI) has progressively liberalized ECB norms to facilitate foreign capital infusion in distressed companies.

In 2019, the RBI **permitted**[4] eligible corporate borrowers to avail ECBs for repaying domestic rupee loans, provided the repayment is part of a Resolution Plan approved under the IBC. This relaxation has enabled foreign investors to fund IBC acquisitions through structured offshore debt, reducing dependence on domestic financing. ECBs also offer the advantage of lower interest rates compared to domestic loans, making them a cost-effective solution for distressed companies seeking revival. However, restrictions such as end-use limitations, minimum average maturity periods, and sector-specific caps continue to impact the flexibility of ECB funding in insolvency resolutions. Expanding ECB accessibility, particularly for resolution applicants and distressed asset investors, could significantly enhance FDI participation in India's IBC ecosystem. Policy liberalization in these areas [e.g., All-in-Cost (AIC) ceilings and Minimum Average Maturity Period (MAMP) requirements], can unlock significant capital participation from global lenders.

5.1. Sectoral Restrictions and Compliance Requirements

While India has relaxed FDI norms for distressed assets, some restrictions and compliance obligations remain (Table-3).

Table 3: Sectoral restrictions and compliance requirements for FDI in India

Key Aspects	Detailed Description
Approval Route for Certain Sectors	(a) Defence, telecom, pharma (brownfield) and insurance sectors require government approval for foreign investment. (b) In critical infrastructure sectors, security clearances may be required.
Foreign Investor Eligibility under IBC	(a) Section 29A[1] of IBC bars defaulting promoters and certain related parties from bidding. (b) Foreign investors must prove they do not have any conflict of interest.
Valuation and Pricing Guidelines	RBI regulations may require that the valuation of stressed assets follow fair market pricing norms [Liquidation value vs Going concern's fair value issues]
Repatriation of Sale Proceeds	FEMA compliance is required for repatriating of funds back to foreign investors after resolution

[4] Reserve Bank of India, RBI/2019-20/20 A.P. (DIR Series) Circular No. 04 dated July 30, 2019 (https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NT20F2121527F10B4CB7B93F63AE8B5C4760.PDF)

6. Impact of FDI on the IBC Resolution Process

Foreign Direct Investment (FDI) has played a transformative role in India's insolvency resolution ecosystem under the IBC. A glimpse of transformative impact on IBC resolutions with entry of foreign investors is presented in Table-4 and Table-5.

Table -4: Impact of FDI on resolution of CDs under the IBC.

Key Contributions	Details	Case Studies
Capital Infusion and Higher Recovery Rates	Foreign investors have driven recovery rates up to 45-50% in high-profile cases, compared to the average 32% for domestic-led resolutions.	**ArcelorMittal's Acquisition of Essar Steel (2019):** ArcelorMittal acquired Essar Steel for ₹42,000 crore, ensuring a 92% recovery for creditors.
Global Expertise and Sustainable Revival	Foreign investors bring technology, governance improvements, and market access, facilitating sustainable business revivals.	**Tata Steel's Acquisition of Bhushan Steel (not direct FDI)**: Post-acquisition, Tata Steel implemented advanced technologies and improved governance, leading to operational **efficiencies**[5&6] (Tata automated its operations with leveraged Japanese process innovation)
Competitive Bidding and Valuation Upside	Foreign participation intensifies bidding, leading to higher asset valuations.	**Binani Cement (2018):** A bidding war between Dalmia Bharat and Ultratech raised the offer from ₹6,700 crore to ₹7,950 **crore**[7&8].

Table – 5: Sector wise impact of FDI in IBC cases

Sector	FDI Involvement	Examples
Steel	More than 50% of resolved cases involve foreign acquirers	(a) **Vedanta:** Acquired Electrosteel Steels. (b) **ArcelorMittal:** Acquired Essar Steel.
Aviation	FDI has played a crucial role in attempts to revive airlines.	**(c) Jet Airways** (2021): The Jalan-Kalrock Consortium, comprising UAE-based businessman Murari Lal Jalan and UK-based Kalrock Capital, won the bid to revive Jet Airways. However, as of November 2024, the Supreme Court ordered the liquidation of Jet Airways due to the consortium's failure to meet financial commitments.
Renewables	Foreign investors have acquired stressed assets in the renewable energy sector.	**ReNew Power and Goldman Sachs:** Acquired stressed solar assets, contributing to sectoral growth.

Foreign investment has significantly improved resolutions under the IBC, bringing in higher recovery rates, better competition, capital infusion, business revival, and employment retention despite usual challenges and roadblocks.

7. Challenges and Roadblocks in FDI Participation

While FDI has played a crucial role in improving insolvency resolutions under the IBC, foreign investors still face multiple challenges that affect their participation.

a. Regulatory Complexities and Compliance Burdens (Multiple Regulations)
b. Uncertainty in Valuation of Distressed Companies
c. Political and Economic Risks for Foreign Investors
d. Delays in Approvals from RBI and Sectoral Regulators
e. Legal Uncertainties and Judicial Delays

[5] The Avenue Mail (2025). Tata Steel Gamharia wins JIPM Excellence Award 2024, February 07, (https://avenuemail.in/tata-steel-gamharia-wins-jipm-excellence-award-2024/)

[6] Business Today (2021). How Tata Steel turned around bankrupt Bhushan Steel, May 18 (https://www.businesstoday.in/latest/corporate/story/how-tata-steel-turned-around-bankrupt-bhushan-steel-296337-2021-05-18)

[7] The Economic Times (2018). NCLAT Approves UltraTech's Revised Bid of ₹7,950 crore for Binani Cement, November 15 (https://economictimes.indiatimes.com/industry/indl-goods/svs/cement/nclat-holds-ultratechs-bid-for-binani-cement-valid/articleshow/66615756.cms?from=mdr)

[8] The Times of India (2018). Benani Cement's CoC decides to stick with ₹6,350 crore offer from Dalmia Bharat Cement, April 04 (https://timesofindia.indiatimes.com/business/india-business/binani-cements-coc-decides-to-stick-with-rs-6350-crore-offer-from-dalmia-bharat-cement/articleshow/63617981.cms)

While domestic resolution applicants benefit from familiarity with local processes, foreign investors often face hurdles such as restricted access to detailed operational data, compressed due diligence timelines, and regulatory approval uncertainties. These asymmetries can lead to suboptimal evaluation in CIRP bidding.

> Global best practices from advanced jurisdictions like the US, UK, and Singapore provide valuable insights into how India can further enhance foreign investment participation in insolvency cases.

Further, regulatory challenges, valuation uncertainties, approval delays, and legal risks still deter many foreign investors. Addressing these challenges through simplified FDI rules, faster approvals, and better legal clarity will further enhance foreign investment participation.

Table-6: Comparative Study of Insolvency Resolution Models

Country	Key Features	FDI Participation	Key Takeaways for us
United States (Chapter 11 Bankruptcy)	Allows debtor-in-possession (DIP) financing, ensuring business continuity during insolvency.	High FDI involvement due to a clear and flexible investment process.	Introducing structured distressed asset investment models like DIP financing can attract more foreign investors.
United Kingdom (Administration & Pre-Pack Sales)	Pre-packaged sales allow faster resolution, reducing valuation uncertainties.	Foreign investors actively acquire distressed UK businesses.	Developing a well-regulated pre-pack insolvency framework can make India's IBC process more FDI-friendly.
Singapore (Debt Restructuring & Cross-Border Insolvency Law)	Strong investor protection and quick resolution timelines.	Singapore attracts global hedge funds and distressed asset investors due to a stable legal environment.	Strengthening cross-border insolvency mechanisms in India can boost global investor confidence.

8. Global Perspective: How Other Jurisdictions Encourage FDI in Insolvency

India's insolvency framework under IBC has significantly improved the resolution process for distressed businesses. However, global best practices from advanced jurisdictions like the US, UK, and Singapore provide valuable insights into how India can further enhance foreign investment participation in insolvency cases (Table-6). By adopting global best practices, India can enhance foreign investor participation in distressed asset resolution, making the IBC framework more robust and internationally competitive.

Table-7: Key recommendations to attract FDI into the distressed asset sector under the IBC

Regulatory Issue	Current Problem	Recommended Change
FDI Approval Delays	Foreign investors need government approval in many sectors, causing delays.	Allow automatic FDI approval in all IBC cases except critical sectors.
FEMA Pricing & Valuation Restrictions	Strict pricing norms prevent market-driven valuation of distressed assets.	Exempt IBC cases from FEMA valuation norms and allow market-based pricing.

Section 29A Restrictions on Foreign Investors	Foreign funds with indirect exposure to NPAs face bidding restrictions.	Relax Section 29A restrictions for foreign investors without local NPA exposure.
Regulatory Clearance Delays (RBI, SEBI, CCI)	Multiple regulatory bodies cause long processing times for foreign investors.	Create a single-window approval system with a 30–60-day clearance timeline.
Foreign Investment in ARCs	Foreigners can invest in ARCs but face ownership and operational restrictions.	Allow 100% foreign ownership in ARCs with fewer operational restrictions.
Sectoral Restrictions in Stressed Asset Acquisitions	Some industries (e.g., telecom, defence) require special approvals, slowing IBC cases.	Grant automatic FDI approval for stressed asset acquisitions, overriding sector rules.
Lack of Cross-Border Insolvency Framework	No strong legal framework for foreign creditors to recover assets across borders.	Adopt UNCITRAL Model Law to make cross-border insolvency resolutions smoother.
Limited Investment Routes for Foreign Investors	Foreign investment in distressed assets is limited to direct takeovers and ARCs.	Introduce DIP Financing, Pre-Pack Insolvency, and Special Situation Funds (SSFs) for easier foreign investment.
ECB Liberalization for Distressed Asset Funding	Stringent All-in-cost (AIC) rate caps and minimum average maturity period (MAMP) requirements make ECBs less attractive for funding IBC resolutions.	Relax AIC restrictions and reduce MAMP for ECBs used in IBC cases, allowing greater flexibility for foreign investors in distressed asset financing.

9. Policy Recommendations and Future Outlook

While India has made significant progress in attracting FDI into the distressed asset sector under the IBC, several reforms can further enhance foreign investor participation. By addressing regulatory bottlenecks, simplifying investment processes, and strengthening investor protections, India can position itself as a global hub for distressed asset investments. Key recommendations are in Table-7.

India is at a critical juncture where foreign investments in distressed assets can significantly improve the effectiveness of the IBC framework. Looking ahead, several trends are expected to shape the future of FDI in insolvency resolutions:

a. Greater Global Investor Interest (global PE firms, hedge funds, and sovereign investors) in Indian Distressed Assets.

b. Expansion of Secondary Market for Stressed Assets with FDI backed ARCs, SSFs & AIFs.

c. Adoption of Cross-Border Insolvency framework.

d. Continued government policy support and reforms in insolvency laws to demonstrate improved recovery rates for creditors

India stands at the cusp of a major transformation in its insolvency resolution framework, and leveraging FDI effectively will be key to unlocking its full potential.

Globally, Pre-Packaged Insolvency Mechanisms have demonstrated faster resolution and reduced litigation. While India currently limits Pre-Packs to MSMEs, expanding this framework to include larger corporate debtors can enable foreign investors to enter through negotiated plans, improving certainty and participation.

10. Way Forward

The IBC has transformed India's distressed asset resolution landscape, providing a structured and time-bound framework for corporate insolvencies. However, the availability of capital remains a key challenge in ensuring successful resolutions. Foreign Direct Investment (FDI) has emerged as a crucial solution, bringing in fresh capital, global expertise, and competitive bidding that significantly improve recovery rates and business revival.

Going forward

a. The role of FDI in IBC cases will continue to expand as India integrates global investment-friendly reforms.

b. The future will see greater participation from sovereign wealth funds, private equity firms, and distressed asset investors in India's insolvency market.

c. Continuous improvement in regulatory frameworks and Cross-Border Insolvency cooperation will further boost foreign investors' confidence.

India stands at the cusp of a major transformation in its insolvency resolution framework, and leveraging FDI effectively will be key to unlocking its full potential. In addition to structural and legal improvements, India must also account for macroeconomic realities. Currency risk, inflation volatility, and global interest rate trends directly impact foreign investors' decision-making in IBC transactions. Proactive monitoring and regulatory buffers are necessary to sustain investor confidence in a dynamic environment.